

**LAKESHORE LAW CENTER**  
**Jeffrey Wilens, Esq. (State Bar No. 120371)**  
**18340 Yorba Linda Blvd., Suite 107-610**  
**Yorba Linda, CA 92886**  
**714-854-7205**  
**714-854-7206 (fax)**  
[\*\*jeff@lakeshorelaw.org\*\*](mailto:jeff@lakeshorelaw.org)

**Attorneys for Plaintiffs**

**UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF GEORGIA**

KATIUSHKA REBECA ACOSTA-	) Case No. 1:17-md-2800 (lead case)
SMITH, et. al.	) No. 1:18-CV-1467-TWT (Acosta-Smith)
ASHLEY ABRAMSON, et. al.,	) No. 1:18-CV-1466-TWT (Abramson)
	)
Plaintiffs,	)
	)
v.	) <b>PLAINTIFFS' REPLY TO</b>
	) <b>OPPOSITION TO MOTION TO</b>
EQUIFAX INC.,	) <b>REMAND, POINTS AND</b>
and Does 1 through 100	) <b>AUTHORITIES IN SUPPORT</b>
inclusive,	) <b>THEREOF</b>
	) Hearing Date:
	) Department 2108
Defendants.	) Hon. Thomas W. Thrash, Jr.

**TO EACH PARTY AND THEIR ATTORNEY OF RECORD:**

Plaintiffs Katiushka Rebeca Acosta-Smith and 49 other plaintiffs in 1:18-CV-1467-TWT and Ashley Abramson and 49 other plaintiffs in 1:18-CV-1466-TWT hereby respectfully submit this further argument and points and authorities in reply to Defendant Equifax's opposition to their motion to remand their cases to the Superior Court of the State of California,

1 County of Orange.

2 DATED: November 7, 2018

3 Respectfully submitted,

4 By \_\_\_\_/s/ Jeffrey Wilens\_\_\_\_\_

5 JEFFREY WILENS  
6 Attorney for Plaintiffs  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	1
TABLE OF AUTHORITIES.....	1
POINTS AND AUTHORITIES.....	1
ARGUMENT .....	1
I.    THE MOTION TO REMAND SHOULD BE GRANTED BECAUSE THIS COURT HAS NO JURISDICTION. ....	1
A.    THE COURT SHOULD REMAND BECAUSE PLAINTIFFS PLED IN THE COMPLAINTS THAT THE DAMAGES AND FEES WERE LESS THAN \$75,000 AND NOW FURTHER CLARIFY THAT LIMIT WAS INTENDED TO BE BINDING. ....	1
B.    EVEN IF THE DAMAGES CAPS AND STIPULATIONS ARE NOT DETERMINATIVE, DEFENDANT HAS FAILED TO MEET ITS BURDEN TO PROVE DAMAGES AND FEES ARE LIKELY TO EXCEED \$75,000 AS TO ANY ONE PLAINTIFF. ....	6
CONCLUSION .....	16
CERTIFICATION OF FONT SIZE .....	16

## **TABLE OF AUTHORITIES**

### **Cases**

<u>Adamson v. SmithKline Beecham Corp.</u> (M.D. Ala., Dec. 27, 2011, No. 2:11- CV-898-WKW) 2011 WL 6778814.....	1
<u>Burns v. Windsor Ins. Co.</u> (11 <sup>th</sup> Cir. 1994) 31 F.3d 1092 .....	1

1	<u>Design Center of the Americas, LLC v. Mike Bell Inc.</u> (S.D. Fla. 2014) 54	
2	F.Supp.3d 1339 .....	8
3	<u>Drew v. Equifax Info. Servs., LLC</u> (N.D.Cal. Dec. 3, 2010, No. C 07-00726	
4	SI) 2010 U.S. Dist.LEXIS 131643.....	10
5	<u>Federated Mut. Ins. Co. v. McKinnon Motors, LLC</u> (11 <sup>th</sup> Cir. 2003) 329 F.3d	
6	805.....	3
7	<u>Fuller v. Suntrust Mortg., Inc.</u> (N.D. Ga., Aug. 6, 2014, No. 1:13-CV-3924-	
8	TWT) 2014 WL 3887916.....	13
9	<u>Goodrich v. Fisher-Price, Inc.</u> (N.D. Ga., Dec. 15, 2016, No. 1:16-CV-3116-	
10	TWT) 2016 WL 9223893 .....	14
11	<u>Jackson v. American General Financial Services, Inc.</u> (M.D. Ga., Apr. 17,	
12	2006, No. 7:06-CV-19 (HL)) 2006 WL 997614 .....	13
13	<u>Jackson v. Wilmington Trust, National Association</u> (N.D. Ga., Oct. 24, 2017,	
14	No. 1:17-CV-2616-CC-JKL) 2017 WL 8218941 .....	3
15	<u>Jones v. Novartis Pharmaceuticals Co.</u> (N.D. Ala. 2013) 952 F.Supp.2d 1277	
16	.....	14
17	<u>Kerner v. Superior Court</u> (2012) 206 Cal.App.4 <sup>th</sup> 84.....	6
18	<u>Kim v. BMW Financial Services NA LLC</u> (9 <sup>th</sup> Cir. 2017) 702 F. App'x 561 ..	11
19	<u>Land Clearing Co., LLC v. Navistar, Inc.</u> (S.D. Ala., Jan. 24, 2012, No.	
20	CIV.A. 11-0645-WS-M) 2012 WL 206171 .....	5
21	<u>Lowery v. Alabama Power Co.</u> (11 <sup>th</sup> Cir. 2007) 483 F.3d 1184 .....	7, 10
22	<u>Platinum Prop. Mgt. Servs, LLC v. West-Pryor</u> (N.D. Ga. Sept. 25, 2013)	
23	2013 WL 5361654 .....	11
24	<u>Ponce v. Fontainebleau Resorts, LLC</u> (S.D. Fla. 2009) 653 F.Supp.2d 1297.7	

1	<u>Pretka v. Kolter City Plaza II, Inc.</u> (11 <sup>th</sup> Cir. 2010) 608 F.3d 744.....	7
2	<u>Roe v. Michelin North America, Inc.</u> (11 <sup>th</sup> Cir. 2010) 613 F.3d 1058 .....	13
3	<u>Sloane v. Equifax Info. Servs.</u> (4 <sup>th</sup> Cir. 2007) 510 F.3d 495.....	11, 12
4	<u>Smith v. American Medical Systems, Inc.</u> (N.D. Ala., Aug. 25, 2009, No.	
5	2:09-CV-168-TMP) 2009 WL 10688480 .....	15
6	<u>Spivey v. Fred's Inc.</u> (M.D. Ala. 2008) 554 F.Supp.2d 1271.....	8
7	<u>St. Paul Mercury Indem. Co. v. Red Cab Co.</u> (1938) 303 U.S. 283 .....	2
8	<u>Standard Fire Ins. Co. v. Knowles</u> (2013) 568 U.S. 558.....	2
9	<u>Whaley v. Bay View Law Group, PC</u> (S.D. Ga., Sept. 30, 2014, No. CV 114-	
10	050) 2014 WL 4926458.....	7
11	<u>Wilson v. Chester Bross Const. Co.</u> (S.D. Ala., Apr. 12, 2011, No. CA 11-	
12	0020-KD-C) 2011 WL 1380052.....	14
13	<u>Zep, Inc. v. Wittenstein</u> (N.D. Ga., Nov. 29, 2012, No. 1:12-CV-3008-ODE)	
14	2012 WL 13018499 .....	8

## **Statutes**

15	California Civil Code § 3295.....	5, 6
----	-----------------------------------	------

**POINTS AND AUTHORITIES**

**ARGUMENT**

**I. THE MOTION TO REMAND SHOULD BE GRANTED BECAUSE THIS COURT HAS NO JURISDICTION.**

Plaintiffs expressly alleged in the complaints that each of their compensatory and punitive damages and attorney's fees were capped at \$74,000. Defendant concedes it has the burden of proving that the amount in controversy with respect to any one plaintiff exceeds \$75,000. While the parties disagree whether the "legal certainty" or "preponderance of evidence" standard applies (Plaintiffs argue the former pursuant to Burns v. Windsor Ins. Co. (11<sup>th</sup> Cir. 1994) 31 F.3d 1092, 1095), Defendant fails under either standard and Plaintiffs' tactical decision to expressly limit the amount in controversy to less than \$75,000 must be given considerable deference.

**A. THE COURT SHOULD REMAND BECAUSE PLAINTIFFS PLED IN THE COMPLAINTS THAT THE DAMAGES AND FEES WERE LESS THAN \$75,000 AND NOW FURTHER CLARIFY THAT LIMIT WAS INTENDED TO BE BINDING.**

Defendant cannot meet its burden of proof in light of the Plaintiffs' stipulation that the damages and fees are less than \$75,000 per plaintiff. (See e.g., Adamson v. SmithKline Beecham Corp. (M.D. Ala., Dec. 27, 2011, No. 2:11-CV-898-WKW) 2011 WL 6778814, at \*4 (Defendant unable to

1 meet its burden where Plaintiff continuously maintained his \$65,000  
2 limitation on damages.) Even though that court applied the legal certainty  
3 test, the reasoning is still sound if the lesser preponderance standard  
4 applies.  
5

6 Defendant argues that the damages cap pled in the complaints are not  
7 sufficiently “binding” as to damages being less than \$75,000 and the post-  
8 removal stipulations cannot be considered, but Defendant is mistaken on  
9 both points.  
10

11 First of all, it is not clear that a written signed formal stipulation is  
12 required. The Supreme Court has not required it. In St. Paul Mercury  
13 Indem. Co. v. Red Cab Co. (1938) 303 U.S. 283, 294, the Court stated that if  
14 the plaintiff “does not desire to try his case in the federal court he may  
15 resort to the expedient of suing for less than the jurisdictional amount, and  
16 though he would be justly entitled to more, the defendant cannot remove.”  
17 This rule was recently reaffirmed by the Supreme Court in Standard Fire  
18 Ins. Co. v. Knowles (2013) 568 U.S. 558, 595-596 with respect to individual  
19 lawsuits as opposed to class actions, when the plaintiffs entered into some  
20 kind of binding stipulation.  
21  
22  
23  
24

25 The word “stipulating” can mean a formal stipulation, but it also  
26 means “specifying” or “setting down a requirement” such as “he stipulated  
27  
28

1 certain conditions before marriage.” (Oxford Dictionary, Oxford University  
2 Press) Although Defendant posits that the stipulation or affidavit must be  
3 in writing and signed by each plaintiff individually, there is no Supreme  
4 Court or 11<sup>th</sup> Circuit case law explicitly requiring a formal stipulation signed  
5 by the plaintiffs.  
6

7  
8 Thus, in Federated Mut. Ins. Co. v. McKinnon Motors, LLC (11<sup>th</sup> Cir.  
9 2003) 329 F.3d 805, 808, the Court accepted a representation by plaintiff’s  
10 counsel in the motion to remand that plaintiff did not seek and would not  
11 accept damages in excess of \$74,000 exclusive of interest and costs.  
12 Defendant’s only rebuttal to this clear holding is to observe that case  
13 involved a defendant’s motion to dismiss a lawsuit filed in federal court on  
14 the grounds of lack of diversity jurisdiction (amount in controversy) and  
15 not a plaintiff seeking to remand for the exact same basis. That distinction  
16 makes no difference. The requirements for diversity jurisdiction and the  
17 amount in controversy apply in the exact same manner in both scenarios.  
18  
19

20  
21 The court in Jackson v. Wilmington Trust, National Association (N.D.  
22 Ga., Oct. 24, 2017, No. 1:17-CV-2616-CC-JKL) 2017 WL 8218941, at \*4  
23 recently surveyed the case law of the 11<sup>th</sup> Circuit on this point and  
24 concluded that a plaintiff’s limitation of damages should be treated as  
25 conclusive in requiring remand. The long quotation is included in the  
26  
27  
28



1 moving papers, but the cases cited by the Jackson court make it clear that  
2 all that is required is that the limitation be expressed in some way that  
3 would be binding on the plaintiffs in the future.  
4

5 Defendant argues that Plaintiffs' damages limitation in the  
6 complaints fall short of a "binding stipulation." However, as stated above, it  
7 is not clear in the 11<sup>th</sup> Circuit that a binding stipulation requires a written  
8 document signed by the plaintiff. Some of the cases cited above do not  
9 involve traditional written stipulations signed by the client and yet were  
10 deemed sufficiently "binding" on the plaintiff.  
11

12 In any event, to further clarify this point, after removal, Plaintiffs filed  
13 signed written stipulations from all 100 plaintiffs in the two lawsuits.  
14 These stipulations remove all doubt; there is no jurisdiction in this Court.  
15

16 Defendant argues that the Court must disregard the stipulations since  
17 they were not presented prior to removal. However, in the 11<sup>th</sup> Circuit post-  
18 removal evidence clarifying the amount in controversy as demanded in the  
19 complaint is admissible and generally given weight by courts.  
20

21 [T]he law is clear that post-removal developments  
22 are properly weighed where they shed light on the  
23 amount in controversy at the time of removal.  
24 "[W]hat is prohibited are post-removal changes in  
25 the amount in controversy, not post-removal  
26 clarifications of the amount that was in controversy  
27 at the moment of removal." Thus, if a plaintiff  
28 comes forward after removal and clarifies (as

opposed to altering) facts bearing on the amount in controversy, courts in this Circuit routinely accept such evidence in determining whether § 1332 jurisdiction existed at the moment of removal. (Land Clearing Co., LLC v. Navistar, Inc. (S.D. Ala., Jan. 24, 2012, No. CIV.A. 11-0645-WS-M) 2012 WL 206171, at \*3 (citations omitted).)<sup>1</sup>

The post-removal stipulations do not alter or change any facts alleged in the complaints. Instead, they merely **clarify** the intention of the plaintiffs at the time of filing the complaints in two ways. First, the complaint already pled damages did not exceed \$74,000 but Defendant argues the plaintiffs did not intend the damages caps in the complaints to be “binding” and could rescind them later in the litigation. **It is now clarified that the plaintiffs intended them to be fully binding.** Second, although the complaints do not expressly seek any injunctive relief, Defendant argued the boilerplate prayer for “further relief as the court may deem proper” preserved the right to seek injunctive relief. **The post-removal stipulations now clarify that plaintiffs did not and will not seek injunctive or other equitable relief.**

Finally, Defendant seems to argue the cap on punitive damages is not permitted by California Civil Code § 3295 (e), which states that “No claim for exemplary damages shall state an amount or amounts.” That statute

---

<sup>1</sup>See additional cases cited in Motion to Remand (Doc. 350, p. 17 of 129.)

only prohibits a California plaintiff from pleading a **particular amount** of punitive damages. There is no prohibition on pleading all damages including punitive damages are less than a certain amount. Subdivision (e) is part of § 3295, which contains other provisions to protect defendants from being pressured into settling unmeritorious cases. (Kerner v. Superior Court (2012) 206 Cal.App.4<sup>th</sup> 84, 120, as modified (May 21, 2012).) The rule against pleading a specific amount presumably serves this purpose by preventing a plaintiff from alleging a large amount of punitive damages in a publicly filed complaint in order to coerce a settlement. Pleading or stipulating that all damages of any kind are less than \$75,000 does not undermine this purpose. Defendant fails to cite any California case holding that an allegation that damages does not exceed a jurisdictional amount is prohibited by California Civil Code § 3295 (e).

Therefore, this Court must accept Plaintiffs' stipulations that the damages and fees do not exceed \$74,000 (per plaintiff). That should end the inquiry and the motion to remand be granted.

**B. EVEN IF THE DAMAGES CAPS AND STIPULATIONS ARE NOT DETERMINATIVE, DEFENDANT HAS FAILED TO MEET ITS BURDEN TO PROVE DAMAGES AND FEES ARE LIKELY TO EXCEED \$75,000 AS TO ANY ONE PLAINTIFF.**

Even if the Court finds the pre-removal stipulated damages/fees cap

1 pled in the complaints and as clarified in the post-removal written  
2 stipulations are not conclusive, the “evidence” presented by Defendant falls  
3 fall short of meeting its burden of proof. All Defendant offers is speculation  
4 about damages.  
5

6 Eleventh Circuit courts have declined to uphold diversity jurisdiction  
7 based on speculation about damages, either based on results in other  
8 lawsuits or from limited facts about the injuries. (Lowery v. Alabama  
9 Power Co. (11<sup>th</sup> Cir. 2007) 483 F.3d 1184, 1210–1211.) In Pretka v. Kolter  
10 City Plaza II, Inc. (11<sup>th</sup> Cir. 2010) 608 F.3d 744, 753, the Court clarified that  
11 a removing defendant can support federal jurisdiction by making “specific  
12 factual allegations establishing jurisdiction and can support them (if  
13 challenged by the plaintiff or the court) with evidence combined with  
14 reasonable deductions, reasonable inferences, or other reasonable  
15 extrapolations.” However, “all doubts about the propriety of removal  
16 should be resolved in favor of remand.” (Whaley v. Bay View Law Group,  
17 PC (S.D. Ga., Sept. 30, 2014, No. CV 114-050) 2014 WL 4926458, at \*2.)  
18  
19

20 If speculation is not proper where the damages are unspecified in the  
21 complaint, then speculation is doubly improper where the complaint  
22 specifies the amount of damages is below the \$75,000 threshold. (See also,  
23 Ponce v. Fontainebleau Resorts, LLC (S.D. Fla. 2009) 653 F.Supp.2d 1297,  
24  
25  
26  
27  
28

1 1305 (rejecting defense reliance on results in prior lawsuits); Spivey v.  
2 Fred's Inc. (M.D. Ala. 2008) 554 F.Supp.2d 1271, 1275 (court refuses to  
3 speculate from testimony about medical treatment and need for future  
4 surgery that there is a quantifiable amount of damages which, when  
5 combined with damages for mental anguish and/or punitive damages,  
6 exceeds the jurisdictional amount); Zep, Inc. v. Wittenstein (N.D. Ga., Nov.  
7 29, 2012, No. 1:12-CV-3008-ODE) 2012 WL 13018499, at \*3 (evidence that  
8 defendant may have stolen between \$0 and \$250,000 in business from the  
9 plaintiff too speculative to support federal jurisdiction); Design Center of  
10 the Americas, LLC v. Mike Bell Inc. (S.D. Fla. 2014) 54 F.Supp.3d 1339,  
11 1342 (court found removing defendant did not meet burden when its  
12 declaration claimed value of disputed property was \$77,000 while opposing  
13 declaration valued same property at \$25,000).)

14  
15  
16  
17  
18 Defendant's speculative "damages analysis" quickly collapses. First of  
19 all, Plaintiffs never alleged \$7,761 in economic damages for even a single  
20 plaintiff. Defendant just made that number up. Plaintiffs never even  
21 alleged they suffered identity theft, just that they were at risk of it.  
22 Plaintiffs did not cite and are not relying on any DOJ report as "empirical  
23 data" to support a particular monetary award. Since, Defendant has not  
24 presented any evidence of any plaintiff suffered actual identity theft, it  
25  
26  
27  
28

1 cannot be assumed that economic damages associated with actual identity  
2 theft would be awarded. Even if the complaints had alleged identity theft, it  
3 would still be improper for the Court to rely on a “study” describing the  
4 average amount of economic loss in identity theft cases. That would be like  
5 relying on a study that the average victim of a car accident suffers a certain  
6 amount of economic damages to prove a particular accident victim, whether  
7 the accident was a fender bender or caused a fatality, suffered that average  
8 amount of economic loss. Without knowing the facts of a particular  
9 identity theft incident, any estimation of economic loss would be pure  
10 speculation.  
11  
12  
13

14 Second, Defendant also argues at least one of the Plaintiffs who  
15 allegedly suffered emotional distress could recover hundreds of thousands  
16 of dollars. However, the Court cannot rely on examples of verdicts in other  
17 cases presented by Defendant since the facts in those cases are not similar  
18 to those in the instant cases.  
19  
20

21 For example, Defendant points to a jury verdict of \$315,000 for  
22 emotional distress that was awarded against Equifax after it was found to  
23 have willfully failed to reinvestigate disputed credit information. However,  
24 the evidence presented at that trial established that the plaintiff suffered  
25 actual identity theft which was aggravated when Equifax willfully  
26  
27  
28

1 mishandled his reinvestigation request under federal credit reporting laws.  
2 Moreover, that plaintiff was undergoing treatment for what was thought to  
3 be a terminal disease at the time, and he presented expert medical  
4 testimony that he suffered from a psychological illness as a result of  
5 Equifax's conduct. (Drew v. Equifax Info. Servs., LLC (N.D.Cal. Dec. 3,  
6 2010, No. C 07-00726 SI) 2010 U.S. Dist.LEXIS 131643, at \*28.) The  
7 district court found the jury award was not grossly excessive.  
8  
9

10 That kind of example cannot be applied to the instant case. It would  
11 be pure speculation to take a jury verdict in a case involving such egregious  
12 facts (actual identity theft, serious medical problems) and actual evidence  
13 of psychological harm and assume something remotely similar will be  
14 applicable to any of the plaintiffs in the instant cases.  
15  
16

17 As the 11<sup>th</sup> Circuit explained in Lowery, "evidence" in the form of the  
18 damages awarded in other mass tort cases tells the district court "nothing  
19 about the value of the claims" where the record was "bereft of detail" about  
20 whether the plaintiffs' complaint was similar to those other cases. (Lowery,  
21 supra, 483 F.3d at 1220–21.) In any event, a vague allegation of emotional  
22 distress is too speculative to support any reasonable inference that the  
23 amount in controversy is more than \$75,000. (See, Rachel v. PNC Bank,  
24 NA, supra, 2017 WL 1362034, at \*7; Platinum Prop. Mgt. Servs, LLC v.  
25  
26  
27  
28

1 West-Pryor (N.D. Ga. Sept. 25, 2013) 2013 WL 5361654, \*1 (although  
2 owner of foreclosed home had emotional and sentimental investment in his  
3 home that cannot be calculated, finding the amount in controversy exceeds  
4 \$75,000 cannot be supported).

5  
6 Defendant also cites Kim v. BMW Financial Services NA LLC (9<sup>th</sup> Cir.  
7 2017) 702 F. App'x 561, in which the Ninth Circuit upheld a jury verdict of  
8 \$150,000 in noneconomic damages awarded to a victim of identity theft  
9 who claimed that the defendant insufficiently investigated a questionable  
10 credit account reporting on his file. In that case, the plaintiff provided  
11 three denials of credit and reduced credit rating due to false information  
12 placed on his credit report by BMW. In the instant case, there is no  
13 evidence of any false information on plaintiffs' credit reports or any denials  
14 of credit or reduced credit rating.  
15  
16  
17  
18

19 Defendant also cites Sloane v. Equifax Info. Servs. (4<sup>th</sup> Cir. 2007) 510  
20 F.3d 495, but that case is also distinguishable. In Sloane, Equifax argued a  
21 \$245,000 jury award for general damages needed to be reduced to \$25,000  
22 (relying on jury verdicts that supported such a reduction). Of course, in the  
23 instant case Equifax takes exactly the opposite position. In any event,  
24 Equifax's conduct in that Sloane case was much more egregious with  
25 respect to that particular plaintiff than what is alleged in the instant cases.  
26  
27  
28



1 In Sloane, supra, plaintiff reported to Equifax that false information  
 2 was being published on her credit report due to the actions of an identity  
 3 thief. That plaintiff spent 21 months trying to get Equifax to correct its  
 4 mistakes and suffered “repeated denials of credit and continuous  
 5 problems.” She also presented evidence of physical symptoms like  
 6 insomnia arising from the stress of dealing with Equifax’s incompetence.  
 7 (Id. at pp. 503-504.) One example cited by the trial court of Equifax’s cruel  
 8 treatment of that plaintiff was that many months after she had notified  
 9 Equifax of the identity theft, it sent her a letter bearing the name of the  
 10 identity thief and warning the thief, not the plaintiff, that the thief’s  
 11 personal information was in peril. (Id. at p. 502.) Moreover, the jury also  
 12 found that the plaintiff had suffered \$106,000 in economic damages as  
 13 result of Equifax’s incompetence. (Id. at p. 499.) Despite these egregious  
 14 facts and tangible evidence of distress, and despite the substantial financial  
 15 loss, the appellate court still reduced the general damages award to  
 16 \$150,000. (Id. at p. 507.)

17 Again, as with the other jury verdict relied upon by Equifax, the one  
 18 in Sloane was not based on analogous facts to those alleged in the  
 19 complaint. There is no allegation of identity theft or significant economic  
 20 damages. Nor has Equifax taken 21 months or any prolonged period of  
 21

1 time to address the problem it created.

2 Third, Defendant claims punitive damages alone could be \$63,000  
3 per Plaintiff. However, the Plaintiffs allege up to \$5,000 in punitive  
4 damages on the second claim for violation of the Consumer Credit  
5 Reporting Agencies Act. Those punitive damages can be considered in  
6 calculating the amount in controversy but fall far short of \$75,000. Any  
7 other form of punitive damages that might be awarded are impossible to  
8 estimate since the amount of economic loss is a matter of pure speculation  
9 given the limited facts presented to the Court. The Court must decline  
10 Defendant's invitation to multiply the (unsupported figure for economic  
11 damages of) \$7,000 by nine to predict the amount of punitive damages that  
12 might be awarded. (See Fuller v. Suntrust Mortg., Inc. (N.D. Ga., Aug. 6,  
13 2014, No. 1:13-CV-3924-TWT) 2014 WL 3887916, at \*8, n. 10.); Jackson v.  
14 American General Financial Services, Inc. (M.D. Ga., Apr. 17, 2006, No.  
15 7:06-CV-19 (HL)) 2006 WL 997614, at \*3 (no basis for calculating amount  
16 of likely punitive damages).)

17 While a court may reasonably surmise the amount in controversy in a  
18 personal injury case is more than \$75,000 when the complaint alleges  
19 wrongful death, Roe v. Michelin North America, Inc. (11<sup>th</sup> Cir. 2010) 613  
20 F.3d 1058, 1066, or serious bodily injury combined with a prayer for  
21

1 unlimited punitive damages, as in Jones v. Novartis Pharmaceuticals Co.  
2 (N.D. Ala. 2013) 952 F.Supp.2d 1277, 1286 (fractures to two legs, three  
3 corrective surgeries, residual injuries) or this Court's own ruling in  
4 Goodrich v. Fisher-Price, Inc. (N.D. Ga., Dec. 15, 2016, No. 1:16-CV-3116-  
5 TWT) 2016 WL 9223893, at \*1 (seven week old baby suffered severe  
6 injuries requiring excruciating medical treatment that may have caused  
7 developmental issues), the facts in the instant complaints or other evidence  
8 before the court are a far cry from the facts in the cited cases.  
9

10  
11  
12 On the other hand, in Wilson v. Chester Bross Const. Co. (S.D. Ala.,  
13 Apr. 12, 2011, No. CA 11-0020-KD-C) 2011 WL 1380052, at \*14, where the  
14 plaintiff had quantifiable medical expenses and lost wages of about  
15 \$20,000, the court still refused to speculate that "plaintiffs' claims for  
16 punitive damages and damages for future medical expenses, pain, suffering  
17 and mental anguish takes the quantifiable expenses over the \$75,000  
18 threshold."  
19  
20

21 In the instant cases, we don't have \$20,000 or \$14,000 or any  
22 quantifiable amount in medical bills, wage loss or any other economic  
23 damages. It would be clearly improper to posit an amount for punitive  
24 damages, that was not tethered to any particular amount of economic  
25 damages, would bring the amount in controversy to over \$75,000.  
26  
27  
28

1 Finally, Defendant argues in its opposition that the value or cost of  
2 injunctive relief sought in the complaints must be considered. However,  
3 already explained, the complaints do not seek equitable relief, so the Court  
4 should not imagine some form of equitable relief that might have been  
5 sought and assign a monetary value to it.  
6

7  
8 In any event, the notices of removal did not state that the value or  
9 cost of injunctive relief was a basis for finding the amount in controversy  
10 exceeded \$75,000. All grounds for finding federal jurisdiction must be  
11 stated in the notice of removal which cannot be amended more than 30  
12 days after service of the complaint. A defendant can amend the notice after  
13 that deadline “to set forth more specifically grounds for removal which  
14 were stated imperfectly in the original petition,” because these are  
15 considered technical defects; however, the defendant may not make a late  
16 amendment to “add missing jurisdictional allegation[s].” (Smith v.  
17 American Medical Systems, Inc. (N.D. Ala., Aug. 25, 2009, No. 2:09-CV-  
18 168-TMP) 2009 WL 10688480, at \*2-3, report and recommendation  
19 adopted (N.D. Ala., Sept. 25, 2009, No. 2:09-CV-168-TMP) 2009 WL  
20 10688481.) Adding the financial value of equitable relief would be adding a  
21 missing jurisdictional allegation and is not permitted.  
22  
23  
24  
25  
26

27 Therefore, the motion to remand must be granted.  
28

**CONCLUSION**

For the above stated reasons, Plaintiffs respectfully urge the Court to grant the motion to remand the two cases.

DATED: November 7, 2018

Respectfully submitted,

By \_\_\_/s/ Jeffrey Wilens\_\_\_\_\_

JEFFREY WILENS  
Attorney for Plaintiffs

**CERTIFICATION OF FONT SIZE**

Pursuant to Local Rule 7.1(D), the undersigned counsel certifies that this document has been prepared with 14-point Georgia font in compliance with the requirements of Local Rule 5.1(C).

DATED: November 7, 2018

Respectfully submitted,

By \_\_\_/s/ Jeffrey Wilens\_\_\_\_\_

JEFFREY WILENS  
Attorney for Plaintiffs